No. 96-1636

Supreme Court, U.S.
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In the
SUPREME COURT OF THE UNITED STATES
October Term, 1996

In the Matter of

BETSY WARREN LEBBOS,

Petitioner

BRIEF IN OPPOSITION TO CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

It is the view of the respondent that this case, the petitioner's tenth petition for certiorari, presents no federal questions for review.

The petitioner seeks to challenge various California statutes and also the practices and procedures of the State Bar of California. The "Questions Presented" which appear at pages i-ii of her petition are directed to those matters. They assume the existence of facts which are not reflected in the record and which the petitioner never explains or justifies.

In any event, California statutes, practices, and procedures cannot fairly be evaluated by reviewing a decision of the Supreme Judicial Court of Massachusetts.

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IN THE MATTER OF BETSY WARREN LEBBOS

BRIEF IN OPPOSITION TO CERTIORARI

STATEMENT OF THE CASE

This is at least the tenth petition for certiorari which the petitioner has filed following the institution of bar discipline proceedings against her in the State of California. See *Lebbos v. Arguellos*, 507 U.S. 918 (1993); *Lebbos v. State Bar*, 502 U.S. 989 (1991); *Lebbos v. State Bar*, 502 U.S. 932 (1991); *McNamee v. State Bar*, 502 U.S. 930 (1991); *Matter of Lebbos*, 498 U.S. 1040 (1991); *Lebbos v. San Jose Mun. Ct.*, 495 U.S. 970 (1990); *Lebbos v. State Bar*, 493 U.S. 1039 (1990); *Lebbos v. State Bar*, 493 U.S. 938 (1989); *Lebbos v. State Bar*, 492 U.S. 935 (1989).

The petitioner was admitted to the practice of law in both California and Massachusetts. In 1991, she was disbarred in California, and certiorari was denied by this court. *Lebbos v. State Bar*, 53 Cal. 3d 37, 806 P.2d 317, 278 Cal. Rptr. 845, *cert. denied* 502 U.S. 932 (1991). The California Supreme Court's action was based on findings that

> [The petitioner] commingled client funds; served on counsel and filed with the court an altered copy of a court order, with intent to deceive; concealed assets from a judgment creditor; unilaterally altered and filed as genuine a stipulation; refused to abide by a court's order recusing itself and lied to a client with respect to that order; and named a person as a plaintiff in a lawsuit without the person's knowledge or consent.
>
> 423 Mass. at 754

The decision of the California Supreme Court was brought to the attention of the Massachusetts Court, which ordered the petitioner to show cause why she should not be disbarred in Massachusetts. She responded to the show cause order by challenging the validity ("existence") of the California State Bar Court (See 278 Cal. Rptr. at 848-849), by asserting that there had been a significant infirmity of

proof in California, and by arguing that the misconduct does not warrant similar discipline here. 423 Mass. at 754.

The petitioner's objections were heard by a single justice of the Massachusetts Supreme Judicial Court. After hearing, he entered a reciprocal order of disbarment. *Matter of Lebbos*, 10 Mass. Att'y Disc. R. 175 (1994). The petitioner appealed, and the Supreme Judicial Court affirmed. *Matter of Lebbos*, 423 Mass. 753, 672 N.E.2d 517 (1996)

REASONS FOR DENYING THE WRIT

I. THE PETITIONER'S CURRENT PETITION DOES NOT PRESENT ANY FEDERAL QUESTION.

By this petition for certiorari, the petitioner seeks review of the actions of the Supreme Judicial Court of Massachusetts, not of the actions of the Supreme Court of California. Indeed, her petition for review of the actions of the California court has already been denied. *Lebbos v. State Bar*, 53 Cal. 3d 37, 806 P.2d 317, 278 Cal. Rptr. 845, *cert. denied* 502 U.S. 932 (1991). Nevertheless, she does not claim that the proceedings in Massachusetts were deficient in any particular or that she was deprived of any substantial

federal right in Massachusetts. All of her objections are to the California proceeding.

The Massachusetts proceeding was controlled by Supreme Judicial Court Rule 4:01, § 16(3). That rule is substantially identical to the model rules promulgated by the American Bar Association (ABA Model Rules for Lawyer Disciplinary Enforcement, § 22(D) (1989); ABA Model Federal Rules of Disciplinary Enforcement, § II(D) (1978)) which have been widely adopted by both state and federal courts. See, e.g., First Circuit Rules of Disciplinary Enforcement § II(D); District of Massachusetts Local Rule 83.6. These rules follow the principles set out by this court in the leading case of *Selling v. Radford*, 243 U.S. 46 (1917).

Thus, S.J.C. Rule 4:01, § 16(3), requires the court to consider four matters before imposing reciprocal discipline. The court must determine whether

> (a) the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard;
>
> (b) there was significant infirmity of proof establishing the misconduct;
>
> (c) imposition of the same discipline would result in grave injustice; or

(d) the misconduct established does not justify the same discipline in this Commonwealth.

The Supreme Judicial Court performed this task and concluded "that the respondent was given fair notice and an opportunity to be heard, and that ample evidence was presented supporting the charges." 423 Mass at 757. The Court also held that the misconduct found by the California Court "obviously and grossly violates the standards of elementary honesty demanded of an attorney" and is a sufficient ground for disbarment. 423 Mass. at 758.

This procedure is significantly more restrictive and exacting than the procedure adopted by this Court. See Sup. Ct. R. 8(a). It fully comports with all requirements of the constitution. The petitioner does not advance any argument to the contrary. In short, there is no suggestion anywhere in the Petition for Certiorari that the Massachusetts court and authorities have contravened any of the petitioner's rights.

II. THE PETITIONER'S CHALLENGE TO CALIFORNIA BAR DISCIPLINE PROCEDURES DOES NOT PRESENT A CASE OR CONTROVERSY.

Essentially all of the petitioner's arguments are directed to the structure of the agencies which administer bar discipline in California and to the propriety of the procedures employed by those agencies. But the agencies and procedures which she challenges do not appear to be those by which she was disbarred. Rather, she seeks to challenge amended statutes which went into effect after her offenses and which are not applicable to her case.

> Petitioner may not attack the current language of [sections 6084(a), 6086.5, and 6079.1 of the California Business & Prof. Code], however, because her disciplinary proceeding did not occur under their authority. Rather, the disciplinary proceedings in her case were conducted pursuant to the State Bar Act as it existed prior to the amendments enacted by the 1988 Legislature.
>
> *Lebbos v. State Bar*, 278 Cal. Rptr at 851

The petitioner's attempt to litigate the constitutionality of statutes which do not pertain to her case does not present an Article III case or controversy. U.S. Const., Art. III, Cl. 2. Whatever objections she has to the "housing, training,

providing of all staff, expenses, facilities, pay, expenses, and benefits" for the California State Bar Court (Pet. pp. 10-11), she cannot raise them in this case.

III. THE PETITIONER'S CHALLENGE TO HER MASSACHUSETTS DISBARMENT DOES NOT PROVIDE A FAIR OPPORTUNITY TO EVALUATE THE PROPRIETY AND ACCEPTABILITY OF CALIFORNIA BAR DISCIPLINE AGENCIES AND PROCEDURES.

The petitioner obviously has long-standing objections to the agencies and procedures by which bar discipline is enforced in California. Although her arguments are difficult to follow, it seems that she is challenging a routine and unremarkable administrative tribunal established for the resolution of bar discipline disputes. She appears to make three claims: First, that the California Supreme Court appoints employees of the administrative agency (the State Bar of California, an integrated bar). Second, that one branch of the administrative agency prosecutes attorneys while another branch performs the adjudicative functions. Third, that the judicial branch of the agency is empowered to assess costs.

Nowhere in the record is there any evidence concerning these allegations. The petitioner suggests that they are the proper subject of judicial notice, but she does not explicitly direct the Court's attention to statutes which she wants noticed, and the statutes included in her appendix do not clearly support her allegations. Further, even if the statutes do establish the allegations, the impact of the rules on the petitioner's cases is purely a matter of conjecture. There is absolutely nothing to explain why the petitioner would challenge such seemingly normal and routine rules.

It would be improvident to consider the petitioner's arguments in the present case. Not only is the record of the California proceedings incomplete and inadequate, the respondents have neither the expertise nor the interest to defend properly. The respondents are residents and officials of Massachusetts. They have no familiarity with nor interest in the statutes of California. If the Court wishes to consider the propriety of California bar discipline proceedings, it should do so in a more appropriate case.

CONCLUSION

The petition for certiorari should be denied.

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